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No. 02-711

IN THE

Supreme Court of the United States

HELEN MOORE, *et al.*,

Petitioners,

v.

DETROIT SCHOOL REFORM BOARD, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF OF ROSA L. PARKS; THE DETROIT CHAPTER OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP); THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCALS 207, 312, AND 345; THE UNITED AUTOMOBILE WORKERS, LOCAL 6000; THE MICHIGAN COALITION FOR HUMAN RIGHTS; AND THE CENTER FOR CONSTITUTIONAL RIGHTS, IN SUPPORT OF PETITIONERS

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Pursuant to Rule 37.2 of the rules of this Court, Rosa L. Parks; The Detroit Chapter Of The National Association For The Advancement Of Colored People (NAACP); The American Federation Of State, County, And Municipal Employees, Locals 207, 312, And 345; The United Automobile Workers,

Local 6000; And The Michigan Coalition For Human Rights, in support of Petitioners respectfully move for leave to file the attached Brief as Amici Curiae in support of the Petition for Writ of Certiorari. The Petitioners have consented to the filing of this Brief, as has the respondent Governor John Engler. Their Certificates of Consent have been filed with the Clerk of the Court. Counsel for the remaining respondents have declined to consent, thereby necessitating the filing of this Motion. The proposed amici each have a substantial interest in the outcome of this case.

Rosa L. Parks is the Mother of the modern civil rights movement and fought for voting rights for over 60 years. Her first attempts to vote took place in Alabama in 1940. She is the co-founder of the Rosa and Raymond Parks Institute for Self-Development, which motivates young people to reach and strive for their highest potential. She is presently a registered voter in Detroit, Michigan, and desires to campaign and vote for the candidates of her choice for Detroit School Board.

The Detroit NAACP is a branch of the oldest and largest civil rights organization in the nation and in the City of Detroit, and has championed voting rights for African-Americans for over 90 years. The Detroit branch has tens of thousands of members who are registered Detroit voters who desire to campaign and vote for candidates for School Board.

The Michigan Education Association (MEA) is an organization of teachers and educational support personnel with over 150,000 members employed in public schools and institutions of higher education throughout the State of Michigan. The MEA strongly supports local control of public education.

AFSCME Local 207 is a labor organization representing approximately 1300 employees in the Detroit Water and Sewerage, and Public Lighting Departments. AFSCME Local 312 is a labor organization representing approximately 500 employees in the Detroit Department of Transportation.

AFSCME Local 345 is a labor organization representing approximately 1100 custodial, maintenance, and other employees of the Detroit Board of Education. The overwhelming majority of these union members are registered Detroit voters who desire to campaign and vote for School Board.

UAW Local 6000 is a labor organization representing 20,000 classified employees of the State of Michigan. Several thousand of its members are registered Detroit voters who desire to campaign and vote for School Board.

The Michigan Coalition for Human Rights is a voluntary, unincorporated non-profit association composed of representatives from religious, civil rights and labor organizations, dedicated to the protection of civil rights both in the United States and abroad, with a particular emphasis on racial discrimination. Many members are registered Detroit voters.

The Center for Constitutional Rights is a national, non-profit legal, educational and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution. Founded in 1966 during the Civil Rights Movement, the Center has a longstanding history of fighting to defend the voting rights of African Americans throughout the United States, *Hamer v. Campbell*, 358 F.2d 215 (5th Cir. 1966); *Powell v. McCormack*, 395 U.S. 486 (1969); *United States of Turner*, No. 85-00014 (S.D. Ala. 1985), and has fought to improve minority school districts through both litigation challenging de facto segregation, *Hobson v. Hansen*, 265 F. Supp. 902 (D.D.C. 1967) (also challenging appointment of school board in District of Columbia), and activism encouraging local community control of school districts in disadvantaged neighborhoods (such as Ocean Hill-Brownsville) in New York City and elsewhere.

Rosa L. Parks, and the Civil Rights and Labor Organizations which have endorsed the attached Brief have either personally lost the right to vote for Detroit School Board as a

result of the complained of actions of the State of Michigan, or many or hundreds or thousands of their members have lost the right to vote for School Board. The proposed *Amici*, are particularly concerned about the manner in which Michigan has used the geographical boundary of the City of Detroit as a way to obscure the reality of the racially disparate impact of the legislation in question. By taking the right to vote for School Board away from only voters who live in the City of Detroit, the State of Michigan has disenfranchised over 60% of the State's African-American population while disenfranchising only 4% of Michigan's non-African American population.

The Michigan Legislation by depriving Detroit voters alone of all the population of Michigan of the right to vote for School Board, has left such voters, predominantly African-Americans, with no effective ability to influence School Board decision making, and has consigned a majority of Michigan's African-American citizens to a degrading form of second-class citizenship. This attempt to limit popular sovereignty has resulted in the majority of Michigan's African-American population being stigmatized by the demeaning denial of a right enjoyed by every other registered voter in Michigan.

Regardless of the intent of the Michigan Legislature, to deny the right to vote in a way that has an overwhelmingly discriminatory impact upon African-American Citizens deprives those citizens of the most fundamental right precisely in a way that the 1965 Voting Rights was intended to prevent. Amici are filing this Brief because of their interest in seeking vigorous enforcement of the 1965 Voting Rights Act, which was intended by Congress to prevent any State from doing what Michigan has done.

For the foregoing reasons, Rosa L. Parks; The Detroit Chapter Of The National Association For The Advancement Of Colored People (NAACP); The American Federation Of

State, County, And Municipal Employees, Locals 207, 312, And 345; The United Automobile Workers, Local 6000; The Michigan Coalition For Human Rights and the Center for Constitutional Rights respectfully request that they be allowed to participate in this case by filing the attached Brief.

Respectfully submitted,

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December 9, 2002

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STATEMENT OF STANDING

Pursuant to Rule 37, Certificates of Consent to the filing of this brief *amici curiae* from the Petitioners and Respondent Governor John Engler have been filed with the Clerk of the Court. The other Respondents have not consented, and a motion has been filed for leave to file this Brief.[1]

[1] Pursuant to Rule 37.6, no counsel for any party has authored this brief in whole or in part and no person or entity other than the *amici curiae*, their members and counsel, have made a monetary contribution to the preparation or submission of this brief.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY OF *AMICI CURIAE*

The proposed *amici* each have a substantial interest in the outcome of this case.

Rosa L. Parks is the Mother of the modern civil rights movement and fought for voting rights for over 60 years. Her first attempts to vote took place in Alabama in 1940. She is the co-founder of the Rosa and Raymond Parks Institute for Self-Development, which motivates young people to reach and strive for their highest potential. She is presently a registered voter in Detroit, Michigan, and desires to campaign and vote for the candidates of her choice for Detroit School Board.

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registered Detroit voters who desire to campaign and vote for School Board.

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INTRODUCTION

Amici submit this brief in support of Petitioners, and agree that Michigan 1999 Public Act 10 ("PA10"), codified as MCLA 308.371-308.471a, violates Section 2 of the 1965 Federal Voting Rights Act, as amended, 42 USC 1973(a), (b)("Sec. 2").

The current PA 10 Detroit School "Reform"[2] Board was appointed amid grandiose, well publicized promises to lower class size, raise test scores, reduce the student drop-out rate, ensure timely delivery of textbooks and school supplies to classrooms, rebuild the physical plant, and implement other reforms. While many citizens believed that reform was never the real intent of the Act, the passage of time has demonstrated that the appointed School Board has not only failed to accomplish these claimed objectives, but currently presides over a public school system in a state of precipitous decline. Standardized test scores have declined dramatically (*See Amici* Apps. A and B, Detroit Public Schools Annual Report, 2001-2002, at 16-17, and Detroit Public Schools Website, MEAP scores for Winter 2002, at 1-3). Overall enrollment has dropped by over 10,000 students since the PA 10 School Board took office, resulting in a loss of over $71 million per year (*Amici* App. C, Jodi S. Cohen, *The Detroit News*, 11/21/2002). The number of high school students enrolled in 10th grade has decreased, indicating the drop-out rate has not been stemmed (*Id.*). Individual class size, however, is increasing (*Id.*). But the question before this Court is not school reform versus voting rights—it is a question of who will judge whether real school reform is occurring.

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[2] Although Michigan entitled PA10: "Appointment of School Reform Boards," nothing in PA10 "reforms" public education in any way. PA10 fails to provide any performance standards, benchmarks, or incentives to lower class size; raise standardized test scores; timely deliver textbooks and supplies to the classrooms; improve educational programs; renovate or replace buildings; improve administrative efficiency; or demonstrate fiscal responsibility. PA10 provides no funding for educational, structural, or staffing improvements. Most crucially, PA10 provides no mechanism for parents, teachers or voters to oversee the decision-making process. Thus, this is not really school reform legislation, and the official title of PA10 is a misnomer.

Throughout Michigan's history—and everywhere in the state today, save Detroit—the local citizens have determined whether the incumbent school officials are properly administering the education of their children. Until PA 10, all Michigan citizens had the power to change local school policies through school board election campaigns, by voting, or by re-calling unsatisfactory school board members from office. Of the total population of Michigan, only Detroit voters are, or ever will be, deprived by PA 10 of the power to effectuate changes in unsatisfactory public school policies. Since 60% of Michigan's African-American population, but only 4% of Michigan's non-African-American population resides in Detroit, the impact of PA 10 is overwhelmingly to disenfranchise African-American voters.[3]

Further, the earliest opportunity Detroit citizens will have to express an opinion on the appointed school board's performance will be the November, 2004 election. MCLA 380.375(2). Even then, citizens will only be allowed to vote "yes" or "no" to continue the appointed board. If "yes" prevails, citizens cannot vote again for another five years. If "no" prevails, then new school board elections will be scheduled. MCLA 380.376(5)(a). The earliest that new board members could take office would be July 1, 2005—six years after the takeover began. MCLA 380.375(5)(b).

As Detroit is the largest U.S. city with a majority African-American population, the national commitment to equality—as exemplified by U.S. Const. Ams. XIII, XIV, XV, the Reconstruction-era Civil Rights statutes, the Civil Rights Acts of 1960, 1964, and 1968, and the 1965 Voting Rights Act—

---

[3] Michigan's total 1990 population was 9,295,297. The 1,291,706 African-Americans constituted 13.9% of Michigan's 1990 population. Detroit's 1990 population of 777,916 African-Americans constituted 75.67% of Detroit's total population, and 60.22% of Michigan's total African-American population. Only 4% of Michigan's 1990 non-African-American population lived in Detroit. U.S. Census Bureau; 1990 Census.

have special meaning in Detroit—and PA 10 is a stinging affront to African American voters.

In February 2002, after the current "Reform" Board announced cutbacks and layoffs of school personnel, thousands of school employees, parents, and children protested outside the PA 10 School Board meeting. Hundreds attended the meeting; the noise was so loud the meeting could not take place (*Amici* App. D, Jodi S. Cohen and Hawke Fracassa, *The Detroit News*, 2/21/02). This occurrence, while unfortunate, is the logical outcome when citizens are deprived of lawful recourse by having the right to campaign for, vote for, and recall members of the local school board stripped away from them. The sting of such disenfranchisement is especially keen when the disenfranchisement has such a disparate racial impact.

In passing PA 10, its supporters claimed it was an act of a benevolent and paternalistic state government seeking to rescue the African-American youths of Detroit from the former incompetent and corrupt elected School Board. The opponents of PA 10, on the other hand, view PA 10 as a naked grab for power, the power to control the spending of the $1.5 billion annual budget of the Detroit Public Schools and the $1.3 billion in bonding authority for improvement of the physical plant of the Detroit Public School system which was available when PA 10 was enacted. (JA, 792-793) ("JA" refers to the Joint Appendix filed in the Court of Appeals). But the issue before the Court is not the intent or the educational results of this legislation—it is its overwhelming disparate impact upon the voting rights of African-American citizens.

At stake is not the question of whether a state generally has the power to change elected School Board positions to appointed School Board positions. This litigation presents the stark question as to whether a state can lawfully implement a change from elected School Boards to appointed

School Boards in a manner that disproportionately disenfranchises African-American voters.

No governmental body is more important to any community than its public school system. By enacting PA 10, overwhelmingly white suburban and rural Michigan State Legislators consigned 60% of Michigan's African-American population to the status of second-class citizens. The 1965 Voting Rights Act exists precisely to prevent minority population groups from being trampled on by the majority. This is the issue in this lawsuit. PA10 is an unlawful act and the court should grant the writ and so hold.

REASONS FOR GRANTING THE WRIT:

I. MICHIGAN VIOLATED THE 1965 VOTING RIGHTS ACT WHEN IT REVOKED THE HISTORIC RIGHT OF THE VOTERS OF THE STATE'S LARGEST SCHOOL DISTRICT, CONTAINING 60% OF THE STATE'S AFRICAN-AMERICAN POPULATION, TO ELECT SCHOOL BOARD MEMBERS.

A. The Right to Vote is the Most Fundamental of All Rights.

Michigan has infringed both major policies that are the foundation of the right to vote.

First, PA10 has left Detroit voters with no effective ability to influence school board decision-making. As articulated in *Wesberry v Sanders*, 376 US 1,17-18(1964):

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

Secondly, by denying to 60% of Michigan's African-American citizens the right to vote for offices for which 96% of Michigan's non-African-American citizens are permitted to vote, Michigan has consigned the majority of Michigan's African-American citizens to a degrading form of second-class citizenship. As *Reynolds* v *Sims*, 123 US 533,567(1964) proclaimed: "To the extent that a citizen's right to vote is debased, he is that much less a citizen."

This Court has often acted to prevent efforts such as PA10 to limit popular sovereignty, and to prevent racial minorities from being stigmatized by the demeaning denial of rights enjoyed by majority citizens. As this court has long held, the right to vote is the most fundamental of all rights "because [it is] preservative of all rights," *YickWo* v *Hopkins*, 118 US 356, 370 (1886), and any abridgment of the right to vote must survive strict scrutiny. *Harper* v *Virginia Board of Elections*, 383 US 663,670(1966); Accord, *Reynolds, supra*, at 554, 561-62.

Even though the right to vote for school board is not considered fundamental in a constitutional sense, *Sailors v. Kent Bd of Educ,* 387 U.S. 105 (1967), to deny the right to vote in a way that has an overwhelmingly discriminatory impact denies African American citizens of the most fundamental right in a way that the voting rights act was intended to prevent.

B. The Right of African-Americans To Vote Cannot Be Diminished By Using Geographic Or Other Criteria That Have A Racially Disparate Impact.

While the Michigan Legislature denied the right to vote based not on race but on the alleged size of the city, this court has repeatedly held that geographic lines or other criteria cannot be used to deny voting rights in a way that discriminates against African-American citizens.

Most famously, in *Gomillion* v *Lightfoot*, 364 US 339, 342-346(1960), Alabama redrew the boundaries of Tuskegee so that all but a small minority of black residents were rezoned outside the city limits. However, this court held that Alabama could not use this device to revoke the right of African-Americans to vote in Tuskegee elections:

> "The . . . conclusion . . . urged upon us by [Alabama], would sanction the achievement by a State of any impairment of voting rights . . . [because of race] whatever so long as it was *cloaked in the garb of the realignment of political subdivisions*. 'It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.' *Frost and Frost Trucking Co.* v *Railroad Commission of California*, 271 US 583 (1926). . . .
>
> The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment.(emphasis added).

Similarly, in *Gray* v *Sanders*, 372 US 368, 380, 381 (1963), this court held that the states cannot deny the right to vote based on criteria such as home site or occupation:

> The concept of political equality in the voting booth contained in the Fifteenth Amendment extends to all phases of state elections . . . and, as previously noted, there is no indication in the Constitution that home site or occupation affords a permissible basis for distinguishing between qualified voters within the State . . . . The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth

> Amendments can mean only one thing—one person, one vote." *Gray, supra*,at 381(emphasis added). Cf. *Evans* v *Cornman,* 398 US 419, 422 (1970)

While the Legislature did not identify Detroit by name in PA 10, it is abundantly clear that the Act was intended to target only Detroit. The Legislature's disingenuous attempt to camouflage its true intent that PA 10 only apply to Detroit by amending the statute after this action was filed to change "the qualifying district" to "a qualifying district" is transparently misleading. As noted in the 6th Circuit Opinion below, Detroit is the only school system in Michigan with over 100,000 students; the second largest system, Grand Rapids, has only 27,000 students. (Pls.. App. at 2a) Detroit is not just the only school district that presently meets the PA 10 criteria; it is the only school system that will ever meet the criteria. Michigan's geographical boundaries are now set. There is no other city in Michigan that has within it sufficient undeveloped area to permit the massive population expansion that would be necessary to generate a school system of over 100,000 students.

PA 10 disenfranchises 60% of the Michigan African-American population by revoking voting rights in the major geographical area where the state's African-American population is concentrated. If PA 10 is upheld, state legislatures will be able to effectively disenfranchise most African-Americans voters by singling out districts where concentrations of African-Americans reside. Because residential housing patterns are much more racially segregated in the North than in the South, this can more readily be applied in Northern states, where the special protections of Section 5 of the Voting Rights Act do not apply. Thus, denying the right to vote to Detroit, which is widely considered to have the most racially segregated housing patterns in the nation, automatically disenfranchises more than half of the State's African-American population.

Indeed, if the Michigan legislature were to lower the school population size restriction of PA 10 to include just five more districts, almost 75% of Michigan African-Americans would be deprived of the right to vote for school board.[4] While the numbers may vary slightly, there are many other states where a Legislature could disenfranchise a large majority of the African-American voting population by disenfranchising the voters of a few geographic districts.

The District Court's Opinion below shows how easy it would be to discriminate in numerous States, North and South. By claiming that urban public school systems are in "deep distress" (Pls. App.46a), resulting in a need to "fundamentally restructure" educational systems in urban area (Pls. App. at 45a); or by claiming that more densely populated urban areas "present problems of governmental management and control different in kind, quality and magnitude" from less densely populated areas (Pls. App. 60a); or even by claiming that the state needs the "freedom to experiment with different techniques to advance public education" in urban areas (Pls.. App., 68a), the states will be free to consign African-American citizens to second-class citizenship. With such soothing words, the States would be free to deny African-American citizens of the franchise stigmatizing them as unable to elect representatives who are capable of solving the problems facing large, urban educational systems. Such attempts to implement public policy through abridgement of the right to vote place our society on a "slippery slope" to a type of government that we had hoped had been left behind forever.

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[4] In 1990, the City of Flint had 67,500 African-Americans; Grand Rapids had 35,000; Pontiac had 30,000; Saginaw had 28,000; and Lansing 22,000; totaling, with Detroit, 960,500 African-Americans, representing 74.4% of Michigan's 1990 total of 1,291,700 African-Americans. U.S. Census Bureau; 1990 Census.

PA 10 strips Detroit voters of the power to decide what types of reform are best suited to their public school system and whether such reforms are accomplishing their stated purposes. By this Act, the state legislature has taken this basic decision-making power from the voters of Detroit, while leaving it in local hands in the rest of the state. Further, the voters of Detroit have no recourse: their elected senators and representatives in the state legislature overwhelmingly voted against PA 10, and Detroit's voters have no ability to remove from office the overwhelmingly white, rural and suburban legislators who passed PA 10 over the objections of Detroit legislators. PA 10 is thus a classic example of the "tyranny of the majority over the minority." Section 2 outlaws such tyranny, when used to disproportionately deprive African-American citizens of the right to vote.

C. The 1965 Voting Rights Act prevents the disenfranchisement of the African-American voting population even when done with a supposedly "benevolent intent."

The rise of the modern civil rights movement in the 1940s and 1950s provided the impetus for Congress to address racial discrimination in voting, culminating in the 1965 Voting Rights Act. *Chisom* v *Roemer*, 501 US 380,403-404(1991) summarized the development and purpose of the Act:

> "Congress enacted the Voting Rights Act of 1965 for the broad remedial purpose of 'rid[ding] the country of racial discrimination in voting.' *South Carolina* v *Katzenbach*, 383 US 301,315(1966). In *Allen* v *State Board of Elections*, 393 US 544,567(1969), we said that the Act *should be interpreted in a manner that provides 'the broadest scope' in combating racial discrimination.* Congress amended the Act in 1982 in order to relieve plaintiffs of the burden of proving discriminatory intent, after a plurality of this Court had concluded that the

> original Act, like the Fifteenth Amendment, contained such a requirement. *See Mobile* v *Bolden*, 446 US 55(1980). Thus, Congress made clear that a violation of [Sec.] 2 could be established *by proof of discriminatory results alone* [emphasis supplied].

The1982 amendments strengthened the Voting Rights Act by clearly declaring the Congressional intent that it is unnecessary to prove intentional racial discrimination to establish a violation. The 1982 amendments were a clear message to the federal courts to strengthen efforts to root out racially discriminatory voting practices. Section 2 now provides:

> "No voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any state or political subdivision *in a manner which results* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . ." 42 USC 1973(a)(Emphasis supplied).

Further, Congress redefined a violation of Section 2 to include a showing that members of a protected group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 USC 1973(b). *Thornburg* v *Gingles*, 478 US 30, 35 (1986) recognized the significance of this change in holding that, under revised section 2, "a violation could be proved by showing discriminatory effect alone," and held that Congress had clearly intended to establish a "results test."

As a result of the 1982 amendments, the focus of a Section 2 challenge to a change in voting practices has now shifted dramatically from the subjective intentions of the government entity in question, to the impact that the new voting procedures have on the political influence of the affected group. The 1982 Amendments were hailed across the political

spectrum as a major step forward in the campaign to root out all vestiges of racial discrimination in voting rights. As stated by former President Ronald Reagan:

> *The right to vote is the crown jewel of American liberties, and we will not see its luster diminished.* Statement of Former President Ronald Reagan, while signing into law The Voting Rights Act Amendments, HR Rep No. 3112, 18 Weekly Comp.Pres.Doc. 84d6 (June 29, 1982) as quoted in Comment, *Vote Dilution, Discriminatory Result, and Proportional Representation: What is the Appropriate Remedy for a Violation of Section II of the Voting Rights Act?*, 32 UCLALR 1203, n.1 (1985) (emphasis supplied).

PA10 has an unlawful disparate impact upon African-American citizenry whether or not the Michigan legislature's intent was discriminatory. What is determinative in this case is the racially disparate *impact* of the decision to revoke the right to vote for school board from 60% of Michigan's African-American citizens, while leaving that right intact for 96% of Michigan's non-African-American citizens. The racially disparate impact of PA10 establishes a clear Section 2 violation, regardless of Michigan's intent.

D. The Judgments Below Fail to Enforce the Congressional Intent Underlying the Voting Rights Act.

Both the 6th Circuit and the District Court Opinions below are based upon a misreading of *Chisom supra* (Pls. App. 19a; 63a). *Chisom* certainly does not suggest that a state can, consistent with Section 2, single out predominantly African-American districts within its boundaries and disenfranchise only the voters in those districts. *Chisom, supra*, simply notes, at 401: "Louisiana could, of course, exclude its judiciary from the coverage of the Voting Rights Acts by changing to a system in which judges are appointed, and in

that way, it could enable its judges to be indifferent to public opinion." This only means a state is free to change an entire state system from elective to appointive without violating the Voting Rights Act. Indeed, such a change would be permissible so long as not made with a racially discriminatory motive.

Section 2, however, clearly forbids states from changing from an elective process to an appointive process where the change has the effect of disproportionately disenfranchising African-Americans. For example, *Chisom, supra*, at 403, states:

> In *Allen* v. *State Board of Elections,* 393 US 544, 567 (1969), we said that the Act should be interpreted in a manner that provides *"the broadest possible scope" in combating racial discrimination.* (Emphasis added).

In *Allen, supra*, one of three Mississippi statutes challenged under Sec. 5 of the Voting Rights Act *changed the office of county superintendent of education in certain counties from elective to appointive.* Acting under Section 5, which requires certain jurisdictions with a history of racial discrimination in voting to obtain advance approval from the U.S. Department of Justice before implementing certain changes in voting practices, *Allen* held that such a decision had to be submitted for advance approval because: "The power of a citizen's vote is affected by this amendment if, after the change, he is prohibited from electing an officer formerly subject to approval of the voters." *Allen, supra*, at 19.

The District Court below thought *Allen* inapplicable because Section 5 does not apply in Michigan. (Pls. App. 64a). However, *Chisom, supra*, notes, at 401, that the "close connection between Sections 2 and 5" undermines the view that a change that must be submitted for pre-clearance under Section 5 is somehow exempt from challenge under Section 2

in non-Section 5 states. It would be unexplainably anomalous if a discriminatory practice prohibited from implementation in a state subject to Section 5 could not be challenged under Section 2 in a non-Section 5 state. Thus, *Chisom* and *Allen* both support the proposition that Section 2 prohibits a state from changing from an elective to an appointive system only in geographical locations where the African-American population is concentrated.

Further, neither the case followed by the 6th Circuit below, *Mixon* v *Ohio*, 193 F3d 389 (6th Cir 1999), nor the cases cited therein, support the proposition that a state can selectively revoke the voting franchise only from geographic areas with high concentrations of African-American voters. *Mixon* concerned a public school system which the state took over to prevent imminent fiscal and administrative collapse. *Id*, at 394-396. Even if *Mixon* is correct that the Voting Rights Act does not prevent the temporary implementation of an appointed school board to prevent a school system from relapsing into complete fiscal and administrative collapse, this is a far cry from the position that a state can for years revoke the right to vote only in areas where the population of African-Americans is concentrated, and where the Detroit public school system, for all its widely-publicized problems, was nowhere near a state of complete fiscal and administrative collapse.

The 6th Circuit below also cited *Mixon*, *supra*, at 408, for the proposition that "Section 2 of the Voting Rights Act does not apply to appointive offices." (Pls.. App. 19a). This is irrelevant: While Section 2 does not apply to systems that are historically appointive, *Allen*, *supra*, holds that it does apply to changes in voting systems where the change will have a racially disparate impact on African-American voting rights. None of the cases cited in *Mixon*, *supra,* at 407, support the proposition that Section 2 may not be used to challenge the replacement of an historically elective process with a newly

imposed appointive process. In fact, none of them even address that issue. Instead, the cases cited mostly found Section 2 not applicable where citizens challenged historically appointive systems and sought to impose a new elective system.

Subsequent to *Mixon, supra*, this Court issued its decision in *Reno* v *Bossier Parish School Board II*, 528 U.S. 320, 120 S.Ct.866 (2000). By definition, Section 5 pre-clearance proceedings deal only with changes from the status quo. Section 2 proceedings, however, while most commonly involving challenges to the status quo, can also encompass challenges to changes in the status quo. This Court made it clear that in states covered by Section 5, if a proposed change receives pre-clearance and is then enacted, that change is still subject to a later Section 2 challenge:

> Pre-clearance "does not represent approval of the voting change; it is nothing more than a determination that the voting change is no more dilutive than what it replaces, and therefore cannot be stopped in advance under the extraordinary burden-shifting procedures of Section 5, but must be attacked through the normal means of a Section 2 action." *Id.*, 120 S.Ct., at 875.

Michigan's change from an historically elective process for selection of local school board members to an appointive process imposed exclusively on the predominantly African-American population of Detroit is not just a dilutive change in voting strength; it is the total disenfranchisement of one segment of Michigan's electorate. If Michigan was a Section 5 state, PA 10 would clearly be subject to pre-clearance scrutiny. *Allen, supra. Bossier Parish II, supra*, makes it clear that whether or not a state is subject to Section 5, a significant change in election procedures which disparately impacts the right of African-Americans to vote is illegal under Section 2.

Voting is a pivotal social practice that defines full membership in this society. Historically, racial discrimination in voting has been a stinging affront to African-Americans, symbolizing and exemplifying segregation and exclusion from the American political process. The Michigan legislative majority, by revoking the right of Detroit residents alone to vote for school board, has stigmatized 60% of Michigan's African-American population with a demeaning exclusion from the political life of the state. But Section 2 makes it illegal to create a group of second-class citizens, by taking away, restricting, or diluting the right to vote.

The Voting Rights Act is a congressional declaration of a national policy of the highest priority to eliminate racial discrimination in the exercise of the voting franchise. This Act is the strongest official government policy declaring an end to centuries of enslavement, discrimination, segregation and despair. The right to vote is essential to the abolition of racial discrimination and to our advance to a society where equal rights are a reality and not just a slogan. The possession of the right to vote empowers citizens to change the basic political conditions of their existence and signals the possessor of that right as a full member of society. As noted by Justice Jackson in *Railway Express Agency* v *New York*, 336 US 106, 112 (1940) (Jackson, J., concurring): "there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally."

For the above reasons, the Opinion of the Court of Appeals that the appointed school board imposed upon the citizens of Detroit does not violate Section 2 is without merit. PA 10 has summarily imposed upon Detroit voters, including 60% of Michigan's African-American population, a protected class, an appointed school board, and denied Detroit voters the right to elect school board members for a minimum of five years.

At the same time, the rest of the registered voters in the state, including 96% of Michigan's non-African-American population, retain their historic right to elect their own school board. If this decision is allowed to stand, it will sanction both present, and future, violations of Section 2. This Court should grant the Writ so that it can reverse the Opinion of the Court of Appeals and strike down PA10 as clearly violative of Section 2 of the 1965 Voting Rights Act.

CONCLUSION

WHEREFORE, for these reasons, *Amici* request that the Petition for a Writ of Certiorari be granted, and the Opinion of the Court of Appeals for the 6th Circuit upholding the Order of the District Court granting Defendants' Motion for Summary Judgment be reversed, and this case be remanded for entry of Judgment for the Plaintiffs.

Respectfully submitted,

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